1932

Dec. 6—Objections to statement of evidence filed by General Counsel.

" 7—Hearing had before Mr. Murdock on approval of statement of evidence. On respondent's motion, continued to Dec. 28, 1932.

" 7—Order of continuance to Dec. 28, 1932, entered.

" 19—Copy of order from U. S. Circuit Court of Appeals (9) enlarging time to Jan. 30, 1933 to file transcript filed.

" 20—Proof of service of objections filed by General Counsel.

" 28—Hearing had before J. M. Sternhagen on approval of statement of evidence, continued to Jan. 11, 1933 on petitioner's motion.

" 28—Order continuing hearing on approval of statement of evidence to Jan. 11, 1933 entered.

1933

Jan. 7—Order from Circuit Court of Appeals (9) to transmit petitioner's Exhibits 1 and 2 in original form, filed.

" 11—Hearing had before Mr. Arundell, Div. 7 on approval of statement of evidence—continued to Jan. 25, 1933.

" 11—Motion to postpone hearing filed by taxpayer—granted to 1/25/33.

" 24—Copy of order from 9th Circuit enlarging time to March 3, 1933 to file transcript filed.

1933

Jan. 25—Hearing had before Mr. Marquette on approval of statement of evidence. On motion of petitioner, continued to Feb. 15, 1933.

Feb. 15—Agreed statement of evidence approved and ordered filed.

" 15—Hearing had before Mr. Murdock on approval of statement of evidence. Agreed statement of evidence filed.

" 27—Copy of order from 9th Circuit for extension to April 3, 1933 to file transcript, filed.

Mar. 3—Copy of order from 9th Circuit for consolidation with docket 41759 filed. [2]

United States Board of Tax Appeals

Docket No. 41758

NATIONAL PAPER PRODUCTS COMPANY, a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the

Commissioner of Internal Revenue in his notice of deficiency (IT:AR:D:60D:CAM) dated October 10, 1928, and as a basis of its proceeding alleges as follows:

1. The Petitioner is a corporation organized under the laws of the State of California, and having its principal place of business at 534 Battery Street, San Francisco, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the Petitioner on October 10, 1928.

3. The taxes in controversy are income taxes for the fiscal year ended April 30, 1925, and for Twenty Thousand, Six Hundred Fifty-seven and 41/100 Dollars ($20,657.41). [3]

The above total deficiency is based upon certain adjustments made by the Commissioner of Internal Revenue in his letter addressed to Zellerbach Paper Company, 534 Battery Street, San Francisco, California, dated October 10, 1928, which company is the parent of petitioner herein, and in his letter addressed to National Paper Products Company dated October 19, 1928. Included in these adjustments is the following addition to the net income of the Zellerbach Paper Company, a certain portion of which was allocated by the Commissioner to the said National Paper Products Company as shown in Schedule 16, page 19, of Treasury Department letter dated October 10, 1928, and addressed to Zellerbach Paper Company at the address aforesaid as follows:

"(d) Depletion claimed	$34,492.50
Corrected 3,679.20 cords at $4.12 in accordance with Engineers report for prior years	$15,158.30
Net disallowed	$19,334.20"

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining the deficiency set forth in his Sixty Day Letter dated October 10, 1928, addressed to Zellerbach Paper Company, the parent of petitioner herein, and erred in determining the deficiency set forth in his [4] Sixty Day Letter dated October 10, 1928, addressed to petitioner herein, in relation to the taxes assessed against said Zellerbach Paper Company and against said National Paper Products Company for the fiscal year ended April 30, 1925, in that the Commissioner refused to allow a depletion rate of $9.375 per cord on timber owned by said taxpayer, and the parent company of said taxpayer, to-wit; Zellerbach Paper Company.

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

Zellerbach Paper Company, parent of petitioner herein, in making its consolidated income tax return for the fiscal year ended April 30, 1925, which included income of petitioner, claimed depletion on

certain timber owned by it in the aggregate sum of $34,492.50. This total sum was made up by adopting a depletion rate of $9.375 per cord on a total of 3,679.24 cords.

The Commissioner allowed a depletion rate on said 3,679.24 cords at the rate of $4.12 per cord, the total amount of depletion on said timber, as per Treasury Department letter dated October 10, 1928, and addressed to Zellerbach Paper Company, amounting to $15,158.30. [5]

This constituted a reduction of the total amount of depletion claimed by Zellerbach Paper Company in the sum of $19,334.20 and resulted in adding the sum of $19,334.20 to the income of the Zellerbach Paper Company for the fiscal year ended April 30, 1925. A certain portion of this additional income was allocated to Petitioner herein, and additional taxes in the sum of $20,657.40 were assessed against taxpayer for the period in question.

The taxpayer contends that a depletion rate of $9.375 per cord is the correct rate of depletion, and that depletion in the total sum of $34,492.50 should be allowed to the said Zellerbach Paper Company for the period in question and the proper amount allocated to Petitioner herein.

WHEREFORE the Petitioner prays that if and when the Respondent hereinabove named shall file an answer to this petition, said Board shall set said matter for hearing, and upon a hearing thereof, together with a hearing of appeal being filed for and on behalf of the said Zellerbach Paper Company, the Board shall find that the said Zellerbach Paper Com-

pany was and is entitled to a depletion rate of $9.375 per cord on 3,679.20 cords, and is entitled to a total depletion in the sum of $34,492.50, and further that the petitioner herein is entitled to have the proper amount of depletion allocated to it and the proper deduction from income allowed for the period in question. Petitioner [6] further prays that said Board find that the consolidated return of the Zellerbach Paper Company including the income of taxpayer herein filed by the said Zellerbach Paper Company for the fiscal year ended April 30, 1925 (except as to changes heretofore proposed by the Commissioner, in which suggested changes the taxpayer has acquiesced), be found to be correct. The Petitioner further prays for such other relief as the nature of the case may require and which the Board may deem equitable and proper in the premises.

JOHN FRANCIS NEYLAN
Counsel for Petitioner, 901 Crocker
First National Bank Building,
San Francisco, California. [7]

State of California
City and County of San Francisco.—ss.

J. D. Zellerbach, being duly sworn, says that he is the President of National Paper Products Company, a corporation, and that he is duly authorized to verify the foregoing petition and is familiar with the statements contained therein, and that the facts are true, except as to those facts stated to be upon in-

formation and belief, and those facts he believes to be true.

[Seal] J. D. ZELLERBACH

Subscribed and sworn to before me this Third day of December, 1928.

[Seal] LULU A. GODSIL

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 13, 1931. [8]

EXHIBIT "A"

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

Oct. 10, 1928

National Paper Products Company,
1789 Montgomery Street,
San Francisco, California.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1924, 1925 and 1926 discloses a deficiency of $35,307.22 for the years 1924 and 1925 and an overassessment of $11,849.04 for the years 1926 as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and

forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,
D. H. BLAIR,
Commissioner.
By C. B. ALLEN
Deputy Commissioner. [9]

IT:AR:D:60D
CAM

STATEMENT OF RETURNS EXAMINED
AND
RESULTING TAX LIABILITY

Company	Fiscal Years	Deficiency in Tax	Over assessment
National Paper Products Company, San Francisco, California.	1924	$14,649.82	
	1925	20,657.40	
	1926		$11,849.04

The adjustments producing the above-stated results are the same as shown in Bureau letter dated August 31, 1928 and are shown in Schedules attached to a letter addressed to Zellerbach Paper Company, San Francisco, California.

A certificate of overassessment will be issued for the amount shown above through the office of the Collector of Internal Revenue for your district, and will be applied by that official in accordance with the provisions of Section 284 (a) of the Revenue Act of 1926.

[Endorsed]: Filed U. S. Board of Tax Appeals, December 6, 1928. [10]

[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue by his attorney, General Counsel, Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits all the material allegations contained in paragraph 1 of the petition.

2. Admits that the deficiency letter was mailed to the petitioner on October 10, 1928, but denies that a true copy of said deficiency letter is attached to the petition as alleged in paragraph 2 of the petition.

3. Denies all the material allegations contained in paragraph 3 of the petition, except the allegation that the tax in controversy is income tax in the amount of $20,657.41 for the fiscal year ended April 30, 1925.

4-(a). Denies that the respondent committed error in the determination of the deficiency as alleged in paragraph 4 of the petition.

4-(b). Denies that any error was made in the determination of the deficiency referred to in deficiency letter dated October 10, 1928.

5. Denies all the material allegations contained in paragraph 5 of the petition. [11]

6. Denies generally and specifically each and every allegation in the petitioner's petition contain-

ed not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the petitioner's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
J. ARTHUR ADAMS,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed] United States Board of Tax Appeals. Filed Jan. 21, 1929. [12]

[Title of Court and Cause.]

AMENDED PETITION

Now comes the above named petitioner and amends its Petition heretofore filed in the above entitled matter and hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:D:60D:CAM) dated October 10th, 1928, and as a basis for its proceeding alleges as follows:

1. The Petitioner is a corporation organized under the laws of the State of California, and having its principal place of business at 534 Battery Street, San Francisco, California.

2. The notice of deficiency, a copy of which was attached to the original petition filed herein and marked Exhibit "A", and which is incorporated

herein by reference thereto, was mailed to the petitioner on October 10, 1928.

3. The taxes in controversy are income taxes for the fiscal year ended April 30, 1925, and for Twenty Thousand Six Hundred and Fifty Seven and 41/100 ($20,657.41) Dollars. [13]

4. The determination of tax as set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining the deficiency set forth in his sixty day letter dated October 10th, 1928 in relation to taxes due for the fiscal year ended April 30, 1925 by reason of the fact that the assessment of any additional taxes for said fiscal year and the collection of any additional taxes for said fiscal year and any proceedings in relation thereto were and are barred by the Statute of Limitations in force and effect at the time of the mailing of the deficiency letter dated October 10, 1928, and prior thereto and now in force and effect, and particularly by reason of the provisions of the Revenue Act of 1926 and more specifically Section 277(a)(1) thereof; also by reason of the provisions of the Revenue Act of 1928 and particularly Section 1 thereof.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner during the fiscal year ended April 30, 1925 was a subsidiary of Zellerbach Paper Company, a corporation duly organized and existing under and by virtue of the laws of the State of California; that the income of this petitioner for the fiscal year in question [14] was included in a con-

solidated income tax return filed by the Zellerbach Paper Company with the Collector of Internal Revenue at San Francisco, California on July 15, 1925; that said consolidated return also included the income of the Sanitary Products Corporation. Petitioner alleges that said return was full and complete and had attached thereto all necessary schedules to enable the Commissioner of Internal Revenue to determine the tax due from this petitioner and its parent, Zellerbach Paper Company; that said return was filed in strict compliance with the Revenue Act of 1924 then in force and effect, and said return was neither false nor fraudulent.

(b) Said return was thereafter examined by the Commissioner of Internal Revenue and the tax reported therein, to-wit, the sum of One Hundred and Fifty Eight Thousand Three Hundred and Seventy Four and 05/100 ($158,374.05) Dollars, which included the tax due on the income of this Petitioner, was thereafter assessed, and was thereafter paid by the said Zellerbach Paper Company on behalf of itself and on behalf of this Petitioner, said payments occurring on the following dates:

July 15, 1925, $39,593.51;

October 16, 1925, $39,593.52;

January 16, 1926, $39,593.51;

April 16, 1926, $39,593.51. [15]

(c) That on the 26th day of February, 1926, the the Revenue Act of 1926 theretofore adopted by the Congress of the United States, was approved by the President of the United States. That said Revenue Act of 1926 became effective as of the date of its

adoption, to-wit, February 26, 1926, except that certain parts thereof became effective retroactively as of January 1st, 1925. That by reason of the retroactive provisions of said act increasing the rate of tax upon the net incomes of corporations during the calendar year 1925 from 12½% to 13%, the Commissioner of Internal Revenue issued Treasury Decision No. 3843 on the 28th day of February, 1926. That after the promulgation of the Treasury Decision No. 3843 as above set forth, a copy of same was mailed to Zellerbach Paper Company, parent of this Petitioner, by the Collector of Internal Revenue at San Francisco, California, requesting that the filing of an amended income tax return as provided for therein be given immediate attention.

(d) That after the receipt of a copy of Treasury Decision No. 3843 by the Zellerbach Paper Company, parent of this Petitioner, as aforesaid, the said Zellerbach Paper Company on behalf of itself, and on behalf of this Petitioner and on behalf of Sanitary Products Corporation, filed an amendment to its income tax return theretofore [16] filed wherein there was set forth the amount of tax originally reported in its income tax return and the additional amount of tax due from the said Zellerbach Paper Company and its subsidiaries, including this Petitioner by reason of the increase in rate from 12½% to 13% as provided in the Revenue Act of 1926; the amount of tax reported therein was Two Thousand One Hundred and Eleven and 65/100 ($2,111.65) Dollars, and on the 15th day of May, 1926, said additional tax was paid. That no schedules of any

kind or character were attached to the amendment to the income tax return filed as aforesaid and that no data were set forth therein except as hereinabove set forth.

(e) That the deficiency letter from which this appeal has been taken was mailed to the Petitioner on October 10, 1928; that the Revenue Act of 1926, and particularly Section 277 (a) (1) governs the time within which an additional assessment may be made against this Petitioner for its fiscal year ended April 30, 1925; that the period of time set forth in said act is three years; that more than three years elapsed between the date of the filing of its original income tax return by Zellerbach Paper Company on July 15, 1925 which included the income of this Petitioner for the fiscal year in question [17] and the date of the issuance of the sixty day letter on October 10, 1928. That by reason of the facts set forth herein, said Commissioner is barred from assessing and/or collecting any additional taxes from this Petitioner for the fiscal year ended April 30th, 1925.

WHEREFORE, the Petitioner prays that upon a hearing of the above entitled matter the Board shall find that there are no additional taxes due from this Petitioner for the fiscal year ended April 30th, 1925, further that said Board shall find that the assessment and the collection of any additional taxes from this Petitioner is barred by the Statute of Limitations and particularly by reason of the provisions of the Revenue Act of 1926. The Petitioner prays for such further and other relief as the nature of

the case may require and which the Board may deem equitable and proper in the premises.

JOHN FRANCIS NEYLAN,
Counsel for the Petitioner,
901 Crocker First National Bank Bldg.
San Francisco, California [18]

State of California,
City and County of San Francisco.—ss.

E. M. Mills, being duly sworn, says that he is the Vice-president of National Paper Products Company, and that he is duly authorized to verify the foregoing petition, and is familiar with the statements contained therein, and that the facts are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

E. M. MILLS.

Subscribed and sworn to before me this Ninth day of June, 1931.

(Seal) LULU A. GODSIL,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires September 13, 1931.

[Endorsed]: United States Board of Tax Appeals. Filed at hearing June 10, 1931. [19]

[Title of Court and Cause.]

ANSWER TO AMENDED PETITION.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau

of Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations of paragraph 1 of the amended petition.

(2) Admits the notice of deficiency was mailed to the petitioner on October 10, 1928.

(3) Admits the allegations of paragraph 3 of the amended petition.

(4) Denies the respondent erred in the determination of the deficiency and specifically denies that the respondent erred in the respects alleged in paragraph 4 (a) of the amended petition.

(5) (a) Admits that petitioner during the fiscal year ended April 30, 1925 was a subsidiary of the Zellerbach Paper Company, a corporation duly organized and existing under and by virtue of the laws of the State of California; that the income of petitioner for the fiscal year in question was included in a consolidated income tax return with the Zellerbach Paper Company filed with the Collector of Internal Revenue, San Francisco, California, on July 15, 1925, which consolidated return also included the income of Sanitary Products Corporation. [20]

Admits that said return was filed under the provisions of the Revenue Act of 1924, then in force and effect, and further admits that said return was not a false or fraudulent return filed with intent to evade tax.

(b) Admits that after the filing of said return

on July 15, 1925, the Commissioner duly assessed the tax shown thereon to be due, in the amount of $158,374.05.

(c) Admits the first two sentences contained in subparagraph (c) of paragraph 5 of the amended petition; admits that on or about the 28th day of February, 1926, the Commissioner with the approval of the Secretary of the Treasury, issued Treasury Decision Number 3843; admits the allegations contained in the last sentence of subparagraph (c) of paragraph 5 of the amended petition.

(d) Admits that after the receipt of a copy of Treasury Decision 3843, by the Zellerbach Paper Company, parent of said petitioner, the said Zellerbach Paper Company, on behalf of itself and on behalf of petitioner, and on behalf of the Sanitary Products Corporation filed a return on Form 1120-A under the provisions of the Revenue Act of 1926, and reported thereon additional tax due from the said Zellerbach Paper Company and its subsidiaries in the amount of $2,111.65, which amount was thereafter duly assessed; admits that no schedules of any kind or character were attached to said last mentioned returns, and that no data was set forth therein except the insertion in line 25 of the same amount of net income, namely, $1,266,992.39, being the same amount of net income as disclosed on the consolidated return filed July 15, 1925. [21]

(e) Admits that the deficiency letter from which this appeal has been taken was mailed to the petitioner on October 10, 1928.

Respondent denies each and every allegation contained in said amended petition except as hereinabove admitted or qualified.

WHEREFORE, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
HENRY A. COX,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals. Filed Jul. 25, 1931. [22]

[Title of Court and Causes—Docket Nos. 41758, 41759.]

FINDINGS OF FACT AND OPINION.
Promulgated May 17, 1932.

The statutory period of limitation for assessment had not run on October 10, 1928, where a return for a fiscal year ended April 30, 1925 was filed pursuant to the 1924 Act on July 15, 1925, and a return for the same period showing increased tax was filed pursuant to the 1926 Act and T. D. 3843 on May 14, 1926.

John Francis Neylan, Esq., for the petitioners.

H. A. Cox, Esq., and F. R. Shearer, Esq., for the respondent.

The Commissioner determined the following defi-

ciencies for the fiscal year ended April 30, 1925:

Zellerbach Paper Company	$ 7,601.55
National Paper Products Company	20,657.40

The only assignment of error is that the statute of limitations had barred assessment and collection of any additional taxes for this fiscal year prior to the day on which the notice of deficiency was mailed.

FINDINGS OF FACT.

The two petitioners are California corporations having their principal place of business in San Francisco.

On July 15, 1925 Zellerbach Paper Company filed a consolidated income tax return on behalf of itself and its subsidiaries National [23] Paper Products Company and Sanitary Products Corporation, under the provisions of the Revenue Act of 1924. It included the income of all three companies. This was not a false or fraudulent return filed with intent to evade tax. The amount of tax shown to be due on this return, to-wit, $158,374.05, was duly assessed by the Commissioner. This return, as the affidavit states, was a return made pursuant to the Revenue Act of 1924.

The Revenue Act of 1926 was approved February 26, 1926. On February 28, 1926 the Commissioner of Internal Revenue issued Treasury Decision 3843 which was as follows:

> Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue

> Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15th, 1926. Payment of the additional tax may be made at the time the return is filed or if installment payments are desired, such installments must be paid at the time they would be due if based upon a return for the fiscal year ended February 28th, 1926.

A copy of this decision was mailed to Zellerbach Paper Company by the Collector of Internal Revenue at San Francisco in a letter advising the corporation to give its immediate attention to the matter of filing new returns and paying additional tax under the Revenue Act of 1926 for its fiscal year ending in 1925.

On May 14, 1925, after the receipt of this letter, the Zellerbach Paper Company filed a return on behalf of itself and its subsidiaries on Form 1120A, showing additional tax due in the amount of $2,111.65. This amount was thereafter duly assessed. This return, as the affidavit states, was a return made pursuant to the Revenue Act of 1926. No schedules were attached to this last mentioned return, and no data [24] were set forth therein except that in line 25 net income of $1,266,992.39 was set forth. This was the same amount of net income shown on the return filed July 15, 1925.

The notice of deficiency was mailed to the petitioners on October 10, 1928.

OPINION.

MURDOCK: The notice of deficiency was sent within four years of the date of filing of the first return, within three years from the date on which the Revenue Act of 1926 was approved, and within three years from the date upon which the last return was filed, but more than three years after the date upon which the first return was filed. The petitioners concede that the Commissioner may proceed to assess and collect the deficiencies unless the three-year period of limitation, provided by the Revenue Act of 1926, applies and began to run on July 15, 1925, the date upon which the first return was filed. [25]

We agree with the Commissioner that the return filed May 14, 1926, was the original return required under the 1926 Act to start the three-year period of section 277 (a) (1). We held in John Wanamaker Philadelphia, 8 B. T. A. 864, and in Hutchinson Company, 14 B. T. A. 367, that a return filed under one act would not start the period of limitation provided in a later act if additional tax was due under the new act for the period covered by the return. Other Board decisions to the same effect are Valentine-Clark Company, 14 B. T. A. 562 (reversed, 52 Fed. (2d) 346); Gus Holstine Dry Goods Company, 16 B. T. A. 1124; Isaac Goldmann Company, 17 B. T. A. 1103 (reversed, 51 Fed. (2d) 427); Myles Salt Company, Ltd., 18 B. T. A. 742 (reversed, 49 Fed. (2d) 232); Adams, Cushing & Foster, Inc., 19 B. T. A. 89; G. Corrado Coal &

Coke Interests, Inc., 19 B. T. A. 691; and E. J. Lorie et al., 21 B. T. A. 612. Cf. Hill Goldwater, 21 B. T. A. 73. We refer to our discussion of the question in the cited cases. The circumstances under which the additional tax arises in this case are different from those under which the additional taxes arose in the cases just mentioned, but perhaps the difference is not material. We have, however, some additional reasons for our position not expressed in those cases. We want to again call particular attention to the discussion of a similar issue in United States v. Updike, 1 Fed. (2d) 550, and in Updike v. United States, 8 Fed. (2d) 913 (certiorari denied, 271 U. S. 661), affirming the above decision. [26] That case differs from the present one only in degree. See also Davis Feed Company, 2 B. T. A. 616 and Covert Gear Co., Inc., 4 B. T. A. 1025.

Perhaps no revenue act specifically required the taxpayer to compute the tax as a part of his return. (See, however, section 240 (a), Revenue Act of 1926). Yet, a study of the various revenue acts, the rules and regulations of the Commissioner, the forms regularly used for making returns, and the way taxpayers themselves have interpreted the laws and regulations in making their returns, shows that a complete return is required and is understood to include a computation of the tax by the taxpayer himself. The acts gave the Commissioner authority to make and publish necessary rules and regulations. He required taxpayers to make their returns on certain forms which he furnished. These are

called income tax returns. They provided a place for a computation of the tax by the taxpayer. The tax thus shown to be due on the return becomes due and payable within nine months. No further assessment is necessary. If the Commissioner determines that more tax is due than that shown on the return, he must assess the additional tax within a prescribed time. This is the assessment which must be made within the period of limitation. If Congress has not specifically provided that the taxpayer shall make the computation and show on his return the amount of tax he believes is due, it has at least given clear indication that it intended to impose this duty upon each taxpayer. For example, in section 273 of the Revenue Act of 1926 "deficiency" is defined to be: [27]

> (1) The amount by which the tax imposed by this title exceeds the amount shown as the tax *by the taxpayer* upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; * * * (Italics ours)

The petitioners did not compute, on the return filed in 1925, the tax which they believed to be due under the 1926 Act. Such a computation was impossible at the filing date. We think Congress intended that each corporation affected by the 1926

Act should file a return after the passage of that act, showing all required information, including the tax it believed to be due, and this return would start the three-year period for assessment. Furthermore, the Commissioner was required to make all needful rules and regulations for the enforcement of the act (section 1101); he required this taxpayer to file a new return; this rule was reasonable; and it must be given the force and effect of law. Maryland Casualty Company v. United States, 251 U. S. 342. The petitioners complied with the law and the ruling by filing the required return on May 14, 1926. Cf. section 1102 (a) and (b). This return, filed under the 1926 Act, could not amend the return filed under the 1924 Act so that the latter would become a return under the 1926 Act. The petitioners, in filing their return under the 1926 Act, adopted as a part thereof so much of the return theretofore filed under the 1924 Act as was appropriate and useful. There was perhaps no necessity for them to duplicate the computation of net income and the supporting schedules already on file. But they knew that additional tax was due under the new act and they had not [28] made an income tax return under the new act until they filed a return showing what tax they honestly believed was due. The computation under the 1924 Act was quite a different thing from the computation under the 1926 Act as is apparent from an examination of the two returns in evidence in this case. The statutory period for assessment began to run on May 14, 1926 when the original return under the 1926 Act was filed.

Reviewed by the Board.

Judgment will be entered for the respondent.

VAN FOSSAN, dissenting: The principle announced in the decisions of the Board on which the prevailing opinion in these cases is predicated has been considered by the Court of Appeals of the District of Columbia and the Circuit Courts of Appeal in three of the cases cited and in each instance the Board has been reversed. Valentine-Clark Co., 14 B. T. A. 562; reversed, 52 Fed. (2d) 346; Isaac Goldmann Co., 17 B. T. A. 1103; reversed, 51 Fed. (2d) 427; Myles Salt Co., 18 B. T. A. 742; reversed, 49 Fed. (2d) 232. On further consideration of the merits of the issue involved, I am convinced that the Board has been in error in all of these cases and that the petitioners should prevail.

GOODRICH agrees with this dissent. [29]

United States Board of Tax Appeals
Washington

Docket No. 41758

NATIONAL PAPER PRODUCTS COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated May 17, 1932, it is

ORDERED and DECIDED: That there is a deficiency of $7,601.55 for the fiscal year ended April 30, 1925.

[Seal] (Signed) J. E. MURDOCK,
Member.

Entered May 19, 1932. [30]

[Title of Court and Cause.]

ORDER.

For good cause, it is

ORDERED that the last paragraph of the decision in this proceeding, entered under date of May 19, 1932, be and hereby is amended to read as follows:

"ORDERED and DECIDED: That there is a deficiency of $20,657.40 for the fiscal year ended April 30, 1925."

Entered May 25, 1932.

[Seal] (Signed) J. E. MURDOCK,
Member.

A true copy: Teste.

[Seal] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals. [31]

[Title of Court and Cause.]

PETITION FOR THE REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes National Paper Products Company, by its attorneys, Messrs. John Francis Neylan, and J. Paul Miller, and respectfully shows:

I.

Jurisdiction for Review.

This is a proceeding for review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision of the United States Board of Tax Appeals, entered on the 19th day of May, 1932, as amended by that certain order entered May 25, 1932, and determining a deficiency in income and profits taxes for the fiscal year ending April 30, 1925, against your petitioner, in the sum of $20,657.41. [32]

This Petition is filed in pursuance of the provisions of Section 1001 of the Act of Congress approved on the 26th day of February, 1926, entitled the Revenue Act of 1926, as amended by the Revenue Act of 1928 and the Revenue Act of 1932.

II.

Your petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place

of business in the City and County of San Francisco, State of California;

For the fiscal year ending April 30, 1926, Zellerbach Paper Company, of which your Petitioner was and is a subsidiary, filed a consolidated income tax return, on behalf of the said Zellerbach Paper Company, the Sanitary Products Corporation, and your Petitioner, on the 15th day of July, 1925, with the Collector of Internal Revenue for the First District of California, whose office was and is located in the City and County of San Francisco, State of California.

III.

Nature of Controversy.

The nature of the controversy is as follows:

The period involved is the fiscal year ended April 30, 1925. For this period respondent proposes that a deficiency of $20,657.41 be assessed against petitioner.

The Petitioner has conceded that the commissioner [33] may proceed to assess and collect this amount as a deficiency unless the three year period of limitation, provided by the Revenue Act of 1926, applies and began to run on July 15, 1925, the date on which the first return was filed.

On that date, to-wit; July 15, 1925, Zellerbach Paper Company filed a consolidated income tax return under the Revenue Act of 1924, on behalf of itself and its affiliated corporations, among them being petitioner herein, with the Collector of Internal Revenue in San Francisco. The Revenue

Act of 1924 provided for a tax of twelve and one-half (12½%) per cent on the net income of corporations and in the return filed on July 15, 1925 the tax was computed on that basis and the sum shown to be due, to-wit: $158,374.05 was thereafter assessed by the Commissioner and paid. This return was neither false nor fraudulent, nor was it filed with intent to evade the tax rightfully due, or any part thereof.

Thereafter and on February 26, 1926, the Revenue Act of 1926 was adopted. It provided for a tax of thirteen (13%) per cent on the net income of corporations for the calendar year of 1925, (and for thirteen and one-half (13½%) per cent thereafter) in lieu of the twelve and one-half (12½%) per cent tax imposed for the same period, by the Revenue Act of 1924. [34]

After the enactment of the 1926 Act the Commissioner furnished Zellerbach Paper Company, parent corporation of petitioner, with a copy of Treasury Decision 3843, which provided that any corporation becoming liable for an additional tax under the 1926 Act should file a new return, and furnished the said Zellerbach Paper Company with a form designated as "U. S. Internal Revenue Form 1120A, Revised April 1926."

The Zellerbach Paper Company filled in the heading of this form, copied into it from the original return filed on July 15, 1925, the figures under the heading "Computation of Tax", computed the additional tax due, executed the document by its Vice President and Assistant Secretary, and paid

$2,111.65 the additional tax shown to be due. This return was filed with, and the additional tax was paid to, the Collector of Internal Revenue in San Francisco, on May 14, 1926.

The return, upon its receipt by the Government, was designated as an amended return. Further evidence of its having been received as an amended return is found in a notation made upon the return itself, to-wit; "See original return".

A sixty day letter was issued to petitioner under date of October 10, 1928, and within sixty days thereafter petitioner appealed to the United States Board of Tax [35] Appeals and thereafter filed its amended petition setting up as a defense the statute of limitations. Prior thereto the amount of deficiency was stipulated, petitioner reserving the defense of the statute of limitations.

The statute of limitations under the 1924 Act is four years (Sec. 277 (a)); under the 1926 Act, three years (Sec. 277 (a) (1)).

On appeal to the Board of Tax Appeals, the final administrative agency of the Executive branch of the government, said Board upheld the position of the Commissioner and held that the return filed on May 14, 1926, was the original return required under the 1926 Act to start the running of the three year statutory period, and that as the deficiency letter was mailed within three years of that date, to-wit: on October 10, 1928, it was mailed within the time required by law, and that the petitioner was liable for a deficiency of $20,657.41.

There are two questions involved:

First: Does the four year statute as provided in the 1924 Act apply, or does the three year period under the 1926 Act apply?

Second: Did the statutory period (whether three years or four years) begin to run with the filing of [36] the original return by the Zellerbach Paper Company on behalf of itself and subsidiaries, or only at the time of the filing of the amended return?

IV.

Assignments of Error.

The Petitioner states that in the record and proceedings before the Board of Tax Appeals, and in the decision and the final order of redetermination rendered and entered by the Board of Tax Appeals, manifest error occurred which intervened to the prejudice of the Petitioner and the Petitioner assigns the following errors, and each of them, which it avers, occurred in said record, proceedings, decision and final order of redetermination, and upon which it relies to reverse said decision and final order of redetermination so rendered and returned by the Board of Tax Appeals, to-wit:

(a) The Board of Tax Appeals erred in holding that the collection of the deficiency in question was not barred by the statute of limitations;

(b) The Board of Tax Appeals erred in holding that the statute of limitations began to run only with the filing of the return on May 14, 1926;

(c) The Board of Tax Appeals erred in not holding that the three year period of limitation

commenced to run [37] from the filing of the original return on July 15, 1925;

(d) The Board of Tax Appeals erred in not holding that the return filed on May 14, 1926 was merely an amended return;

(e) The Board of Tax Appeals erred in not holding that the three year period of limitations began to run from the filing of the original return, even though an amended return was filed on May 14, 1926;

(f) The Board of Tax Appeals erred in making the following statement in its opinion, which statement is not supported by the evidence;

"We agree with the Commissioner that the return filed May 14, 1926, was the original return required under the 1926 Act to start the three year period of section 277 (a) (1)."

(g) The Board of Tax Appeals erred in finding a deficiency against the Petitioner for the fiscal year ending April 30, 1925, in the sum of $20,657.41.

(h) The Board of Tax Appeals erred in rendering decision for respondent.

WHEREFORE, your petitioner prays:

(1) That this Honorable Court review the decision of the United States Board of Tax Appeals.

(2) That the transcript of the record be prepared in accordance with the law and with the rules [38] of this Honorable Court, and transmitted to the Clerk of this Court for filing.

(3) That appropriate action be taken by this Honorable Court to the end that the errors complained of may be reviewed and corrected.

(4) For such other and further relief as to this Honorable Court may seem fit and proper.

NATIONAL PAPER PRODUCTS COMPANY,
By THOMAS McLAREN,
Vice-President.
JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioner,
1 Montgomery Sreet,
San Francisco, California. [39]

State of California,
City and County of San Francisco.—ss.

Thomas McLaren, being first duly sworn, deposes and says:

That he is the Vice-President of National Paper Products Company, the Petitioner in the above entitled matter; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except those matters which are therein alleged on information or belief, and that as to those matters he believes it to be true; that the said Petition is filed in good faith, and not for the purpose of delay.

THOMAS McLAREN.

Subscribed and sworn to before me this 21st day of October, 1932.

[Seal] JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: United States Board of Tax Appeals. Filed November 1, 1932. [40]

[Title of Court and Cause.]

NOTICE OF FILING OF PETITION FOR REVIEW.

To: C. M. Charest, Esq.,
General Counsel,
Bureau of Internal Revenue,
Washington, D. C.
Attorney for Respondent.

PLEASE TAKE NOTICE that the above named Petitioner did, on the 1st day of November, 1932, file with the United States Board of Tax Appeals a Petition for Review of the decision of said Board in the above entitled cause by the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which said Petition for Review is herewith served upon you.

JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioner,
1 Montgomery Street,
San Francisco, California.

Service of the foregoing notice and service of a copy of the Petition for Review mentioned in said Notice, is hereby accepted this 1st day of November, 1932.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

[Endorsed]: United States Board of Tax Appeals. Filed Nov. 1, 1932. [41]

TREASURY DEPARTMENT.
INTERNAL REVENUE SERVICE.

San Francisco, Calif.

Office of the Collector
First District of
California
In Reply Refer to
Room 109—FFL

Gentlemen:

It is noted that the income tax returns for your corporation are filed on a fiscal year basis therefore the following is submitted for your information, in regard to time for filing new returns and paying additional tax under the Revenue Act of 1926 for corporations with fiscal years ending in 1925.

(T.D. 3843)

"Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15th, 1926. Payment of the additional tax may be made at the time the return is filed or if installment payments are desired, such installments must be paid at the time they would be

due if based upon a return for the fiscal year ended February 28th, 1926."

D. H. BLAIR,
Commissioner.

You should give this matter your immediate attention.

Respectfully,
JOHN P. McLAUGHLIN,
Collector.

JPMcL/FEL [42]

[Endorsed]: U. S. Board of Tax Appeals. Div. 9. Docket 41758-41759. Admitted in Evidence June 10, 1931. Petitioner's Exhibit 3.

(642M)

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
and Refer to
Zellerbach Paper Company,
534 Battery Street,
San Francisco, California.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1924, 1925 and 1926 discloses a deficiency of $22,461.95 for the years 1924 and 1925 and an overassessment of $2,328.06

for the year 1926 as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,
D. H. BLAIR,
Commissioner.
By C. B. ALLEN,
Deputy Commissioner.

Enclosures:
Statement
Form 866
Form 882

Schedules 1 to 35 inclusive.

[Endorsed]: U. S. Board of Tax Appeals Div. 9 Docket 41758-41759 Admitted in Evidence June 10, 1931. Petitioner's Exhibit 4. [43]

IT:AR:D:60D
CAM

STATEMENT OF RETURNS EXAMINED AND RESULTING TAX LIABILITY

Company	Fiscal Years	Forms	Deficiency in Tax	Over-assessment
Zellerbach Paper Company San Francisco, California.	April 30, 1924	1120 A. Cons.	$14,860.40	
	1925	1120 A. Cons.	7,601.55	
	1926	*		2,328.06
National Paper Products Company, San Francisco, California.	1924	#	14,649.82	
	1925	#	20,657.40	
	1926	*		11,849.04

* Income consolidated with return filed by Zellerbach Corporation, San Francisco, California.

Income consolidated with return filed by Zellerbach Paper Company, San Francisco, California.

The adjustments producing the above-stated results are the same as shown in Bureau letter dated August 31, 1928 and are shown in the attached Schedules 1 to 35, inclusive.

Certificates of Overassessments for the amounts shown above will be issued through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with the provisions of Section 284 (a) of the Revenue Act of 1926.

A carbon of this letter has been mailed to John Francis Neylan in accordance with the authorization contained in your power of attorney running to him. [44]

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 1

Net Income

Net income as disclosed by return		$432,957.61
As corrected		550,939.61
Net adjustment		$117,982.00
Unallowable deductions and additional income:		
(a) Bad Accounts	$81,312.68	
(b) Auto Insurance	5,055.10	
(c) Depreciation	47,429.00	
Total		133,796.78
Nontaxable income and additional deductions:		
(d) Oregon State Income Tax	$ 202.59	
(e) Appreciation	15,612.19	
Total		15,814.78
Net adjustment as above		$117,982.00

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 2

Explanation of Items Changed

(a) Bad accounts claimed on return over book deduction		$81,312.68
Decrease reserve for losses claimed		3,917.45
Total		$85,230.13
Reserve April 30, 1923	$73,043.22	
Reserve April 30, 1924	69,125.77	
Decrease		3,917.45
Excess deduction (Double deduction		$81,312.68

Schedule 2
(Continued)

(b) Charges to reserve for auto insurance included in adjustment on return restoring increase to reserve of $2,075.71 constitutes a double deduction.		
Proof—Reserve 4/30 - 1924		$18,401.92
4/30 - 1923		16,326.21
Net increase		$ 2,075.71
(c) Depreciation corrected:		
Machinery, etc. 4/30/23	$379,229.77 at 8%	$30,338.39
Additions, 1924	37,870.84 at 4%	1,514.83
Buildings (10 year lease)	34,961.32 at 10%	3,496.13
Automobiles claimed on books (No Change)		32,062.50
Total allowed		$67,411.85

Zellerbach Paper Company. Year ended April 30, 1924.

Schedule 2
(Continued)

Claimed on return		$72,686.44
Add: Error on return:		
Depreciation on books	$ 70,420.89	
Less - Restored on return	28,266.48	42,154.41
Total on return		$114,840.85
Allowed as above		67,411.85
Disallowed net		$ 47,429.00

(d) Oregon State income tax is allowable deduction.

(e) Appreciation of Assets is not taxable income. [46]

SCHEDULE 3

Net Income

National Paper Products Company

Net Income as disclosed by return		$643,755.67
As corrected		759,215.79
Net adjustment		$115,460.12
Unallowable deductions and additional income:		
(a) Bad accounts	$23,519.40	
(b) Depreciation	91,940.72	
Net adjustment as above		$115,460.12

SCHEDULE 4

Explanation of Items Changed

(a) Bad accounts claimed on return over book deduction	$ 23,519.40
Decrease reserve for losses claimed	30.32
Total	$ 23,549.72

Zellerbach Paper Company. Year ended April 30, 1924.

Schedule 4
(Continued)

Reserve April 30, 1923	$25,453.69	
April 30, 1924	25,423.37	
Decrease		30.32
Excess deduction (Double deduction		$ 23,519.40
(b) Depreciation Corrected:		
Machinery and Equipment:		
San Francisco - 4/30/23	$ 193,653.36 at 8%	$ 15,492.27
Additions 1924	(14,242.54 at 4%	(569.70)
Stockton, Los Angeles & H.Q. 4/30/23	$1,329,940.28 at 8%	106,395.22
Additions 1924	713,232.07 at 4%	28,529.28
Carthage - 4/30/23	703,350.46 at 8%	56,268.04
Additions 1924	65,059.38 at 4%	2,602.37
Buildings Stockton 4/30/23	1,050,699.98 at 2½%	26,267.50
Additions 1924	126,031.53 at 1¼%	1,575.39
Buildings Carthage - 4/20/23	346,863.90 at 2½%	8,671.60
Additions 1924	5,312.30 at 1¼%	66.40
Automobiles claimed (No Change)		5,233.54
Total Allowable		$250,531.91

Zellerbach Paper Company. Year ended April 30, 1924.

Schedule 4
(Continued)

(b) Continued.		
Claimed on return		$310,027.47
Add - Error on return:		
Depreciation on books	$269,280.99	
Less - Restored on return	236,835.83	32,445.16
Total on return		$342,472.63
Allowed as above		250,531.91
Disallowed net		$ 91,940.72

The Sanitary Products Corporation.

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 5
Net Income

Net loss as disclosed by return		$ 11,344.52
As corrected - net loss		8,704.94
Net adjustment		$ 2,639.58
Unallowable deductions and additional income:		
(a) Reserve for losses	$ 2,396.44	
(b) Depreciation	243.14	
Net adjustment as above		$ 2,639.58

Zellerbach Paper Company. Year ended April 30, 1924.

SCHEDULE 6

Explanation of Items Changed

(a) Increase in reserve for losses increases income accordingly:

Reserve - 4/30/1924	$ 5,127.20
4/30/1923	2,730.76
Net increase	$ 2,396.44
	[48]

(b) Depreciation claimed on machinery $ 1,215.69
Corrected: Average assets, $12,156.92 at 8% 972.55

Net disallowed $ 243.14

Automobiles allowed as claimed.

the importance of the initial computation by the taxpayer.

In the companion case (No. 7209) we have held that a return filed under the Revenue Act of 1918 could not be considered a return under the Revenue Act of 1921, if it did not show the deductions as authorized by the Act of 1921, although in the particular case involved the statutory deduction of $2,000 was the only change made in the return of the particular taxpayer. We have declined with all due respect to follow decisions to the contrary by coordinate courts. These decisions are pressed upon us here as a ground for reversing the action of the Board of Tax Appeals. It is not disputed by the Commissioner that the principle of those decisions is applicable to the case in hand. If by reason of the fact that the Commissioner by a mere computation applied to the return filed under the Revenue Act of 1918 can determine the proper tax levied by the Act of 1921 on petitioner's income, a new return is unnecessary, then a new return is unnecessary in the case at bar. Indeed, the decisions above referred to apply with more force to the case at bar where the only question involved is a matter of computation of a tax at a new rate than to a case where the question under consideration is a deduction which a statute expressly requires be shown by the taxpayer in his return as fixed by the law applicable to the taxation of the income shown in the return.

We base our conclusion in this case on the fact that by the uniform practice of the Treasury De-

partment over a long period of years and by its decisions above referred to as well as by the express terms of the statute a return is required where an additional tax is imposed by the new Revenue Act. Consequently, we hold that regardless of the fact which we deem largely fortuitous that the return filed by the taxpayer in this particular case shows a gross income and a net income which is identical no matter whether the terms of the Revenue Act of 1924 or the terms of the Revenue Act of 1926 are applied, the fact that even in such a case a proper return will show an additional tax properly requires a return fixing the amount of such additional tax. This return was demanded by the Treasury Decisions requested by letter and complied with by the petitioner less than three years before the issuance of the deficiency letter.

We wish to make it clear that unless we are correct in holding that the decisions of our coordinate courts are erroneous this case as well as the companion case should be reversed.

Order affirmed.

(Endorsed): Opinion. Filed Feb. 28, 1934. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit.

No. 7140.

NATIONAL PAPER PRODUCTS COMPANY, a Corporation,

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

JUDGMENT.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

This Cause came on to be heard on the Transcript of the Record from the United States Board of Tax Appeals and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Order of the said Board of Tax Appeals in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Feb. 28, 1934. Paul P. O'Brien, Clerk.

[Title of Court and Cause—Consolidated Cases.]

APPLICATION FOR STAY OF MANDATE

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Come now the Petitioners above named, by Messrs.

John Francis Neylan and J. Paul Miller, their counsel, and hereby make application to this Honorable Court for its order staying the issuance of the mandate in the above entitled cases until April, 29, 1934.

This application is made to this Honorable Court upon the grounds that an opinion in the above named cases was filed on the 28th day of February, 1934, in accordance with which a Judgment or Decree was, on said day, filed and entered, affirming the Judgment or Decree of the United States Board of Tax Appeals, and because of the said opinion, Judgment or Decree of this Court, the petitioners above named desire and intend to petition the Supreme Court of the United States for its Writ of Certiorari in the above entitled cases, requesting the said Supreme Court of the United States to review the decision of this Honorable Court in said matters, basing their said petition for a Writ of Certiorari upon the fact that there now exists a conflict between the following courts: the Circuit Courts of Appeal for the 5th and 8th Circuits and the Court of Appeals of the District of Columbia, on the one hand, and between this Honorable Court on the other hand, the decision of this Honorable Court in the above entitled cases being at conflict with decisions of the aforementioned courts upon identical legal questions.

Wherefore, Petitioners pray that the mandate of this Honorable Court be stayed as hereinabove applied for.

Dated: San Francisco, California, March 15, 1934.

JOHN FRANCIS NEYLAN
J. PAUL MILLER

[Endorsed]: Filed Mar. 15, 1934. Paul P. O'Brien, Clerk.

[Title of Court and Cause—Consolidated Cases.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Messrs. John Francis Neylan and J. Paul Miller, counsel for the petititioner, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including April 29, 1934; and in the event the petition for a writ of certiorari to be made by the petitioner herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR
United States Circuit Judge.

Dated: San Francisco, California, March 15, 1934.

[Endorsed]: Filed Mar. 15, 1934, Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Cause and Number.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and fourteen (114) pages, numbered from and including 1 to and including 114, to be a full, true and correct copy of the entire record, excluding original exhibits transmitted herewith, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of March, A. D. 1934.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 116] In United States Circuit Court of Appeals for the Ninth Circuit

Nos. 7140, 7211

National Paper Products Company, a Corporation,

vs.

Commissioner of Internal Revenue

Nos. 7141, 7209

Zellerbach Paper Company, a Corporation,

vs.

Commissioner of Internal Revenue

No. 7210

Zellerbach Paper Company, as Transferee of A. S. Hopkins Company,

vs.

Commissioner of Internal Revenue

Order Staying Issuance of Mandates—Filed April 27, 1934

Upon application of Mr. John Francis Neylan, counsel for the petitioners, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the mandate of this Court in each of the above causes be, and hereby is stayed to and including May 10, 1934; and in the event the petitions for writs of certiorari to be made by the petitioners herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandates of this Court are to be stayed until after the said Supreme Court passes upon the said petition.

Francis A. Garrecht, United States Circuit Judge.

Dated San Francisco, California, April 27, 1934 .

A true copy. Attest: April 28, 1934.
Paul P. O'Brien, Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

[fol. 117] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 4, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.